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CIRCUIT COURT OF
TALLAPOOSA COUNTY, ALABAMA
PATRICK CRADDOCK, CLERK

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY, ALABAMA

Ex. 6 Personal Privacy (PP)

Plaintiffs,)
)
v.) **Case No.:** _____
)

)
) **JURY DEMANDED**

**ADVANCED DISPOSAL SERVICES, INC., A DELAWARE CORPORATION;
ADVANCED DISPOSAL SERVICES SOUTH, LLC, AN ALABAMA CITIZEN;
ADVANCED DISPOSAL SERVICES ALABAMA HOLDINGS, LLC, AN
ALABAMA CITIZEN; STONE'S THROW LANDFILL, LLC, AN ALABAMA
CITIZEN; TALLASSEE WASTE DISPOSAL CENTER, INC., AN ALABAMA
CORPORATION; HERMAN KITCHENS, AN INDIVIDUAL; FICTITIOUS
DEFENDANTS A THROUGH Z, BEING THOSE INDIVIDUAL PERSONS,
PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND/OR
CORPORATIONS WHO AND/OR WHICH ARE RESPONSIBLE FOR THE
WRONGDOING AS ALLEGED IN THE COMPLAINT, AND WHOSE
IDENTITIES ARE OTHERWISE UNKNOWN AT THIS TIME, BUT WHO
AND/OR WHICH WILL BE ADDED BY AMENDMENT WHEN
ASCERTAINED,**

Defendants.

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COMPLAINT

I. PARTIES

1. Plaintiffs,

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, are resident citizens of Tallapoosa County, Alabama. Plaintiffs are residents of a community within Tallapoosa County known as the Ashurst Bar Community.

2. Advanced Disposal Services, Inc. is a Delaware Corporation with its principal mailing address at 90 Fort Wade Road, Suite 200, Ponte Vedra, Florida 32081, and registered with the Secretary of State to do business in Alabama as of April 15, 2002. Advanced Disposal Services, Inc. is the parent company of Advanced Disposal Services, South, LLC, which is the parent of the Advanced Disposal Services Alabama Holdings, LLC, which is the parent of the Stone's Throw Landfill, LLC. The Stone's Throw Landfill, LLC is the parent of the Tallassee Waste Disposal Center Inc., Advanced Disposal Services CATS, LLC, and Advanced Disposal Services Alabama EATS, LLC. Ultimately, Advanced Disposal Services, Inc. is the owner and is the operator of the Stone's Throw Landfill, located at 1303 Washington Blvd, Tallassee, Alabama 36078, both directly and through its network of subsidiaries, and at all times relevant to the Complaint, and doing business in Tallassee, Tallapoosa County, Alabama.

3. Advanced Disposal Services South, LLC is a foreign limited liability company, incorporated under the laws of Delaware, with its principal mailing address at 90 Fort Wade Road, Suite 200, Ponte Verdra, Florida 32081, registered with the Secretary of State to do business in Alabama as of April 15, 2002. Advanced Disposal Services South, LLC is also a citizen of Alabama. Advanced Disposal Services South, LLC is a subsidiary of Advanced Disposal Services, Inc. Advanced Disposal Services South, LLC is the parent of Advanced Disposal Services Alabama Holdings, LLC, which is the parent of the Stone's Throw Landfill, LLC. The Stone's Throw Landfill, LLC is the

parent of the Tallassee Waste Disposal Center Inc., Advanced Disposal Services CATS, LLC, and Advanced Disposal Services Alabama EATS, LLC. At all times relevant to the Complaint, Advanced Disposal Services South, LLC, through its network of subsidiaries, caused or contributed to the contamination the Plaintiffs' water supply and surrounding lands in Tallassee, Tallapoosa County, Alabama, causing injuries to the persons and properties of the Plaintiffs.

4. Advanced Disposal Services Alabama Holdings, LLC is a foreign limited liability company, incorporated under the laws of Delaware, with its principal mailing address at 13385 Edna Brake Lucas Road, Montgomery, Alabama 36117, registered with the Secretary of State to do business in Alabama as of April 9, 2001. Advanced Disposal Services Alabama Holdings, LLC is also a citizen of Alabama. Advanced Disposal Services Alabama Holdings, LLC, is the parent of the Stone's Throw Landfill, LLC. The Stone's Throw Landfill, LLC is the parent of the Tallassee Waste Disposal Center Inc., Advanced Disposal Services CATS, LLC, and Advanced Disposal Services Alabama EATS, LLC. Advanced Disposal Services Alabama Holdings, LLC is an owner and operator of the Stone's Throw Landfill both directly and through its network of subsidiaries. At all times relevant to the Complaint, Advanced Disposal Services Alabama Holdings, LLC, through its network of subsidiaries, caused or contributed to the contamination the Plaintiffs' water supply and surrounding lands in Tallassee, Tallapoosa County, Alabama, causing injuries to the persons and properties of the Plaintiffs.

5. Stone's Throw Landfill, LLC is a foreign limited liability company, incorporated under the laws of Delaware, with its principal place of business at 13385 Edna Brake Lucas Road, Montgomery, Alabama 36117, registered with the Secretary of

State to do business in Alabama as of April 9, 2001. Stone's Throw Landfill, LLC is also a citizen of Alabama. Stone's Throw Landfill, LLC is a subsidiary of Advanced Disposal Services, Inc., Advanced Disposal Services South, LLC, and Advanced Disposal Services Alabama Holdings, LLC. Stone's Throw Landfill, LLC is the parent of the Tallassee Waste Disposal Center Inc., Advanced Disposal Services CATS, LLC, and Advanced Disposal Services Alabama EATS, LLC. Advanced Disposal Services Alabama Holdings, LLC is an owner and operator of the Stone's Throw Landfill both directly and through its network of subsidiaries. At all times relevant to the Complaint, Stone's Throw Landfill, LLC, through its network of subsidiaries, caused or contributed to the contamination the Plaintiffs' water supply and surrounding lands in Tallassee, Elmore County, Alabama, causing injuries to the persons and properties of the Plaintiffs.

6. Tallassee Waste Disposal Center, Inc. is an Alabama corporation formed in Montgomery County, Alabama, with its registered mailing address at 2 North Jackson Street, Suite 605, Montgomery, Alabama 36104, formed on April 18, 1986. Tallassee Waste Disposal Center, Inc. is a subsidiary of Stone's Throw Landfill, LLC, which is a subsidiary of Advanced Disposal Services Alabama Holdings, LLC. Advanced Disposal Services Alabama Holdings, LLC, is a subsidiary of Advanced Disposal Services South, LLC, which is a subsidiary of parent company Advanced Disposal Services, Inc. At all times relevant to this Complaint, Tallassee Waste Disposal Center, Inc., the permittee for the Stone's Throw Landfill, caused or contributed to the contamination the Plaintiffs' water supply and surrounding lands in Tallassee, Tallapoosa County, Alabama, causing injuries to the persons and properties of the Plaintiffs.

7. Defendant Herman Kitchens (“Kitchens”) is an individual resident citizen of Lee County, Alabama. At all times pertinent to this suit, Defendant Kitchens was the General Manager of the Stone’s Throw Landfill, owned by Defendants, located in or adjacent to the Ashurst Bar Community in Tallapoosa County, Alabama.

8. Fictitious Defendants A through Z are individual persons, partnerships, limited liability companies, corporations or other entities, which are citizens of Tallapoosa County, Alabama. At all times pertinent to this suit, Fictitious Defendants A through Z, did business on the property owned by Defendants located in or adjacent to the Ashurst Bar Community in Tallapoosa County, Alabama. The identities of Fictitious Defendants A through Z are otherwise unknown at this time, but will be added by amendment when ascertained.

II. NATURE OF THE CASE

9. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

10. This is an action arising out of the Defendants’ operation of a landfill in close proximity to Plaintiffs’ residences, whereby such operation has and continues to create an abatable trespass and nuisance in the form of the discharge of contaminated leachate and noxious odors, which it turn has caused and continues to cause the attraction of vermin and other unwanted pests and disease.

11. Plaintiffs are current and past owners and/or occupiers of property in the Ashurst Bar Community who seek compensatory and punitive damages for the nuisance Defendants’ activities have caused, for the damage caused to their properties, for the diminishment in value of their properties, and for injunctive relief requiring Defendants

to remedy the conditions that their conduct has caused. In addition, Plaintiffs seek an award of attorney fees, costs and such other and further relief as this court deems just.

III. ALLEGATIONS OF FACT

12. Stone's Throw Landfill is a special and industrial waste landfill which spans more than 300 acres and accepts an average of 1,050 tons a new waste per day. Stone's Throw Landfill accepts municipal waste, construction and demolition waste, yard waste, inert waste, sludge, wastewater bio-solids, friable asbestos, non-friable asbestos, industrial waste, foundry sand, ash, and contaminated soil.

13. As rainwater and runoff percolate through the landfill, landfill leachate is formed. Landfill leachate typically has a heavy, putrid odor and is black in color. The black liquid generally contains both organic and inorganic chemicals, including heavy metals and pathogens.

14. The Stone's Throw Landfill discharges leachate contaminated with Boron, Arsenic, Chromium, Copper, Lead, Nickel, Zinc, Chloride, Toluene, Chloroform, Bromodichloroform, halo acetic acids (HAAs), total tri halomethanes (TTHMs), E.Coli, Cryptosporidium and Giardia, among other contaminants, and the runoff of Defendants' leachate into the Ashurst Bar Community, has and continues to cause damage to Plaintiffs' properties and their health.

15. At all times pertinent to this suit, Plaintiffs resided upon and/or owned real property within the Ashurst Bar Community, located in Tallapoosa County, Alabama.

16. At all times pertinent to this suit, more than two-thirds (2/3) of the Plaintiffs were and are resident citizens of the State of Alabama. In fact, with few if any exceptions, all Plaintiffs are resident citizens of the State of Alabama.

17. At all pertinent times, at least one of the Alabama Defendants to this suit, is a Defendant from whom significant relief is being sought by the Plaintiffs.

18. At all pertinent times, at least one of the Alabama Defendants to this suit, is a Defendant whose alleged conduct forms a significant basis for the claims asserted by Plaintiffs.

19. At all times pertinent to this suit, the principal injuries complained of by the Plaintiffs were and are the result of conduct and/or related conduct of each of the Defendants to this suit, and such injuries were and are incurred in the State of Alabama. In fact, such injuries were incurred solely within Tallapoosa County, Alabama.

20. During the three (3) year period preceding the filing of this Complaint, no class action or mass action has been filed against the Defendants asserting the same or similar factual allegations as against any of the Defendants on behalf of the Plaintiffs or other persons.

21. At all times pertinent to this suit, all of the claims in this action arise from events and occurrences in the State of Alabama, and all of the events and occurrences made the basis of this suit resulted in injuries that occurred in the State of Alabama. In fact, such events, occurrences and injuries occurred solely within Tallapoosa County, Alabama.

22. At all times material hereto, Defendants (both known and fictitiously identified) knew that their activities at the subject landfill were and are releasing noxious odors and contaminated leachate into the Ashurst Bar Community, and further that their activities were attracting vermin and other pests and disease to the Ashurst Bar Community.

23. At all times material hereto, Defendants (both known and fictitiously identified) had a duty to conduct their activities at the landfill in a manner to prevent the discharge of noxious odors and/or contaminated leachate, and the attraction of vermin, unwanted pests and disease.

24. All Defendants breached the duty of care owed to the Plaintiffs, by emitting and discharging noxious odors and/or contaminated leachate into the Ashurst Bar Community.

25. Over the course of their release and/or discharge of noxious odors and/or contaminated leachate into the Ashurst Bar Community, Defendants purposely withheld information from public and governmental officials concerning the harmful effects of their activities.

26. Defendants' suppression of such information from public and governmental officials was done with the intent to avoid discovery by the general public of the environmental and health hazards created by the release and/or discharge of these noxious odors and/or contaminated leachate.

27. Defendants' suppression of such information from public and governmental officials was also done with the intent to further avoid responsibility for their actions.

28. As a result of the Defendants' actions, all of the Plaintiffs who own or who have owned real property in the Ashurst Bar Community, have lost the value of their land and homes – the value having been diminished as a result of the actions of the Defendants.

IV. CAUSES OF ACTION

COUNT ONE – NEGLIGENCE

29. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

30. Defendants owed a duty to Plaintiffs to exercise due and reasonable care in their use and maintenance of the subject landfill, and to avoid the release and/or discharge of noxious odors and/or contaminated leachate into the Ashurst Bar Community.

31. Defendants breached the duty owed to Plaintiffs by engaging in the conduct herein and, under the circumstances, the Defendants' breaches constitute negligent conduct.

32. As a direct and proximate result of the Defendants' negligent conduct, Plaintiffs have been caused to suffer, and will continue to suffer, damages to their real property.

COUNT TWO – WANTONNESS

33. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

34. For years, Defendants have known of the seriousness and substantial risk of harm to human health from the discharge and/or release of noxious odors and/or contaminated leachate into the Ashurst Bar Community, which in turn attracts vermin and other unwanted pests, and carries diseases that are harmful to human health.

35. Defendants have consciously and deliberately released and discharged these noxious odors and/or contaminated leachate with the full knowledge and understanding of the dangers and consequences to the Plaintiffs.

36. Said conduct constitutes wantonness and said wanton conduct is a direct and proximate cause and/or contributing cause of the damages and injuries sustained by the Plaintiffs.

37. The acts of the Defendants are and have been willful, wanton, illegal, fraudulent and/or done in gross disregard for the safety, health, rights and properties of the Plaintiffs, and, as a result of the Defendants' acts, the Plaintiffs are entitled to receive punitive damages.

38. The Defendants' conduct constitutes a pattern and practice of intentional wrongful conduct, which also was committed with actual malice.

COUNT THREE – PUBLIC NUISANCE

39. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

40. Defendants have created a continuing nuisance by their release and/or discharge of noxious odors and/or contaminated leachate into the Ashurst Bar Community.

41. The continuing release and/or discharge of noxious odors and/or contaminated leachate upon Plaintiffs' properties has caused and continues to cause Plaintiffs hurt, inconvenience and harm.

42. As a result of the Defendants' creation and maintenance of this nuisance, Plaintiffs have been caused to suffer damages of a kind and degree that are different from the public in general.

COUNT FOUR – PRIVATE NUISANCE

43. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

44. Defendants have created a continuing nuisance by their release and/or discharge of noxious odors and/or contaminated leachate into the Ashurst Bar Community.

45. The continuing release and/or discharge of noxious odors and/or contaminated leachate upon Plaintiffs' properties has caused and continues to cause Plaintiffs hurt, inconvenience and harm.

46. As a result of the Defendants' creation and maintenance of this nuisance, Plaintiffs have been caused to suffer damages in the loss of their rights to quietly enjoy their individual properties.

COUNT FIVE – BREACH OF DUTY TO WARN

47. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

48. Defendants have participated in the discharge and/or release of noxious odors and/or contaminated leachate on to and/or adjacent to Plaintiffs' properties, which in turn, has and continues to attract vermin and other unwanted pests, and carries diseases.

49. Having created this hazard to human health and the environment, the Defendants have had a continuing duty to warn the Plaintiffs of the dangers created by their discharge and/or release of noxious odors and/or contaminated leachate.

50. Defendants have superior knowledge as the presence and risk of said noxious odors and/or contaminated leachate, and the vermin and unwanted pests and diseases that they attract.

51. Defendants' failure to warn the Plaintiffs was and is negligent, willful, wanton and in gross disregard for the safety, rights and property of the Plaintiffs and is a violation of Ala. Code §§6-5-100 through 6-5-104.

52. The Plaintiffs relied on said misrepresentations and concealment to their detriment.

53. The fraud, misrepresentation, deceit and suppression by the Defendants are the direct and proximate cause of the injuries and damages to the Plaintiffs as alleged above.

COUNT SIX – FRAUD, MISREPRESENTATION AND DECEIT

54. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

55. The acts of Defendants in misrepresenting and concealing of the health risks associated with Defendants' discharge and/or release of noxious odors and/or contaminated leachate, as well as Defendants' false statements to the Plaintiffs and/or the general public and Defendants' concealment from the Plaintiffs and/or the general public as more specifically alleged above, constitutes fraud, misrepresentation and deceit, both actual and concealed, in violation of Ala. Code §§6-5-100 through 6-5-104.

56. The Plaintiffs relied on said misrepresentations and concealment to their detriment.

57. The fraud, misrepresentation, deceit and suppression by the Defendants is a direct and proximate cause of the injures and damages to the Plaintiffs as alleged above.

COUNT SEVEN – OUTRAGE

58. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

59. Defendants have committed the tort of outrage, proximately injuring the Plaintiffs by their discharge and/or release of noxious odors and/or contaminated leachate into Plaintiffs' community, and by allowing the continued discharge and/or release of such odors and/or contaminated leachate.

60. Said conduct by the Defendants is beyond the bounds of human and corporate decency, is intolerable in this community and throughout a civilized society, and is a direct and proximate cause of the Plaintiffs' injuries and damages.

COUNT EIGHT – BATTERY

61. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

62. Defendants have intentionally and continuously committed battery to the Plaintiffs' persons by dispersing and/or releasing the aforementioned noxious odors and/or contaminated leachate which have come in contact with Plaintiffs' bodies.

63. Defendants' battery is a direct and proximate cause of injuries and damages to the Plaintiffs.

COUNT NINE – ASSAULT

64. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

65. Defendants have intentionally and continuously committed assault to the Plaintiffs' persons by dispersing and/or releasing the aforementioned noxious odors and/or contaminated leachate which have come in contact with Plaintiffs' bodies.

66. Defendants' assault is a direct and proximate cause of injuries and damages to the Plaintiffs.

COUNT TEN – PERMANENT INJUNCTION

67. Plaintiffs adopt and re-allege, as if fully stated herein, the averments contained in the paragraphs above.

68. The wrongful acts and conduct of the Defendants, as alleged herein, have and will cause irreparable harm to the Plaintiffs for which there is no adequate remedy at law other than a permanent injunction prohibiting such conduct by Defendants and requiring Defendants to abate the discharge and/or emissions of noxious odors and/or contaminated leachate on to Plaintiffs' properties and to Plaintiffs' bodies.

WHEREFORE, Plaintiffs claim from the Defendants, jointly, and/or individually, compensatory damages and punitive damages in such amount as the trier of fact deems appropriate, together with interest, attorney fees, costs and such other relief to which the Plaintiffs may be justly entitled to receive. Plaintiffs further request that this Court enter an Order permanently enjoining Defendants from discharging and/or releasing said noxious odors and/or contaminated leachate onto Plaintiffs' properties, and requiring Defendants to remove and otherwise clean up and remove the source(s) of such offensive and noxious odors and/or contaminated leachate.

JURY DEMANDED

Plaintiffs demand a trial by jury of all issues triable of right by a jury.

Respectfully Submitted,

/s/ W. Taylor Stewart
W. Taylor Stewart
Attorney for Plaintiffs

OF COUNSEL:

Stewart & Stewart, P.C.
1021 Noble Street, Suite 110
Anniston, Alabama 36201
Tel: (256) 237-9311
Fax: (256) 237-0713

/s/ Edward McF. Johnson
Edward McF. Johnson
Scott J. Hooker
Attorneys for Plaintiffs

OF COUNSEL:

Stewart & Stewart, P.C.
1826 3rd Avenue North, Suite 300
Bessemer, Alabama 35020
Tel: (205) 425-1166
Fax: (205) 425-5959

/s/ Lonnie A. Washington, Sr.
Lonnie A. Washington, Sr.
Attorney for Plaintiffs

OF COUNSEL:

Lonnie A. Washington, Sr., Esq.
1429 2nd Avenue North
Bessemer, Alabama 35020
Tel: (205) 424-5722

PLEASE SERVE DEFENDANTS BY CERTIFIED MAIL AT:

Advanced Disposal Services, Inc.
90 Fort Wade Road, Suite 200
Ponte Vedra, Florida 32081

Advanced Disposal Services South, LLC
c/o CT Corporation System
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

Advanced Disposal Services Alabama Holdings, LLC
c/o CT Corporation System
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

Stone's Throw Landfill, LLC
c/o CT Corporation System
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

Tallassee Waste Disposal Center, Inc.
c/o CT Corporation System
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

Herman Kitchens

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